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C O N F I D E N T I A L SECTION 01 OF 02 CARACAS 000763

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SUBJECT: CAPRILES BACK IN COURT

REF: 06 CARACAS 03646

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Classified By: Political Counselor, Robert Downes,
for Reason 1.4(b).

¶1. (C) SUMMARY. Opposition mayor of Baruta municipality Henrique Capriles Radonski appeared in appeals court April 16, following the Bolivarian Republic of Venezuela's (BRV) decision to appeal a lower court's ruling to acquit him December 15. The prosecution argued Capriles failed to impede the actions of opposition protesters at the Cuban Embassy during the events of April 12, 2002. The prosecution seemed unprepared and apparently based its appeal on a flawed theory. The three-judge panel will reconvene the court May

¶2. END SUMMARY

The Appeal

¶2. (SBU) The case against Baruta Mayor Henrique Capriles Radonski continued April 16, this time in appeals court. A three judge panel officiated the hearing. (NOTE: A total of 33 judges have presided over Capriles' case in the five years since the Bolivarian Republic of Venezuela (BRV) originally presented charges. END NOTE). Due to the large number of attendees, the hearing was delayed 45 minutes while the judges decided whether the session would be held in a larger room. In the end, the hearing took place in the original room, with only eighteen observers (including Poloff, supporters of Capriles, and reporters) allowed in the courtroom. No other diplomatic missions sought to attend.

¶3. (SBU) Capriles was acquitted December 15 of charges that he fomented violence outside the Cuban Embassy during the events of April 12, 2002. The BRV dropped its charges of illegal entry after videos and witness testimony presented overwhelming evidence that Capriles' entry into the compound was facilitated by Cuban Embassy personnel.

Prosecution Unprepared

¶4. (SBU) The prosecution's lack of familiarity with the appeals process did not bode well for them. In their opening statements, the prosecution presented a motion to delay the hearing, arguing it was necessary for the judges to view a videotape of the events in question. The defense maintained

that according to laws regulating appeals cases, the prosecution was not allowed to introduce new evidence. The judges took a five-minute recess to discuss the motion, then ruled in favor of the defense.

¶5. (SBU) The prosecution based its argument on two principles. First, they argued that the previous judge, Auristela Salazar Maldonado, only conducted a partial and biased review of the evidence presented. Second, the prosecution stated that Capriles' failure to act that day "facilitated" the illegal actions of others, making him an accomplice.

¶6. (SBU) The defense challenged the prosecution's two arguments. Capriles' legal team argued that the BRV's questioning of Salazar's ruling was politically motivated. The defense also maintained that under Venezuelan law an individual cannot be accused of being an accomplice for his refusal and/or inability to impede the actions of others. Capriles then addressed the court, and asked the appellate judges for justice. He recounted his long legal tribulations, including four months in jail and time away from his mayoral duties. Following his statements, the judges said they will reconvene the court May 2. A crowd of approximately 75 supporters, including staff members and constituents, joined the opposition mayor in a post-hearing press conference.

¶7. (C) COMMENT: The prosecution's lack of familiarity with the appeals procedure reflected poorly on them and bolstered the defense's belief that the court would rule in their favor. That said, the appellate judges' decision to reconvene the court in ten working days caught Capriles' legal team off guard. Nevertheless, the prosecution's claim that Capriles' inactions make him an accomplice, a charge that apparently has no legal basis under Venezuelan law, seems to indicate that the BRV is grasping for straws. END

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COMMENT.

BROWNFIELD